IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 854 of 2007(B)

PETITIONER:

N. KARUNAKARAN, AGED 75 YEARS,
S/O. NILAKANDAN, PUTHANKANDATHIL HOUSE,
PERINGALA P.O., KAYAMKULAM.

BY ADV. SMT.M.A.VAHEEDA BABU.

RESPONDENTS:

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1. GROUP GENERAL MANAGER,
IRCTC LTD., SOUTHERN ZONE, 6A, THE RAIN TREE PLACE
NO.9, MC NICHOLS ROAD, CHETPET, CHENNAI-600031.

2. THE REGIONAL MANAGER,
IRCTC LTD., REGIONAL OFFICE, 107 NANDINI,
GIRI NAGAR, KADAVANTHRA, COCHIN-682020.

3. M/S. PAPPADIES CATERERS,
THEKKEPARAMBIL COMPLEX, NEAR ST.GEORGE HOSPITAL,
ERUVA EAST P.O., KAYAMKULAM-690564, REPRESENTED BY
ITS PROPRIETOR.

BY ADV. SRI.M.C.CHERIAN,SC,RAILWAY CATERING
SRI.V.N.ACHUTHA KURUP (SR.)
SRI.B.S.SWATHY KUMAR
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH
SRI.T.R.HARIKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1- A TRUE COPY OF THE LETTER DATED 19-5-2005 ISSUED BY THE SENIOR DIVISIONAL COMMERCIAL MANAGER, SOUTHERN RAILWAY, TRIVANDRUM.

EXT.P2- A TRUE COPY OF THE LETTER DATED 19-5-2005 ISSUED BY THE SENIOR DIVISIONAL COMMERCIAL MANAGER, SOUTHERN RAILWAY, TRIVANDRUM.

EXT.P3- A TRUE COPY OF THE LETTER DATED 22-6-2005 ISSUED BY DO. DO.

EXT.P4- DO. DO.

EXT.P5- A TRUE COPY OF THE LETTER DATED 31-10-2005 ISSUED BY DO.

EXT.P6- DO.

EXT.P7- A TRUE COPY OF THE LETTER DATED 13-11-2006 RE-FIXING THE LICENCE FEE FOR THE VEGETARIAN TEA STALL ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT.

EXT.P8- A TRUE COPY OF THE LETTER DATED 13-11-2006 RE-FIXING THE LICENCE FEE FOR THE FRUIT STALL AND AUXILIARY STALL ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT.

EXT.P9- A TRUE COPY OF THE TENDER NOTIFICATION INVITING TENDERS FOR CATERING UNITS PUBLISHED BY RESPONDENTS 1 AND 2.

EXT.P10- A TRUE COPY OF THE SPECIMEN TENDER DOCUMENT ISSUED BY RESPONDENTS 1 AND 2 TO THE TERNDERERS.

RESPONDENTS' EXTS:

EXT.R1(A)- TRUE COPY OF LETTER DATED 20-4-2006 OF REGIONAL MANAGER, IRCTC, ERNAKULAM TO THE PETITIONER.

EXT.R1(B)- TRUE COPY OF LETTER NO.IRCTC/CATG./NON-DEPT/06 DATED 20-10-2006 OF REGIOANL MANAGER, IRCTC, ERNAKULAM TO THE PETITIONER.

EXT.R1(C)- TRUE COPY OF LETTER NO.IRCTC/CATG.NON-DEPT/06 DATED 11-1-2007 OF REGIONAL MANAGER, IRCTC, ERNAKULAM TO THE PETITIONER IN RESPECT OF VTS/KAYAMKULAM.

EXT.R1(D)- TRUE COPY OF LETTER NO.IRCTC/CATG.NON-DEPT/06 DATED 11-1-2007 OF REGIONAL MANAGER, IRCTC, ERNAKULAM TO THE PETITIONER IN RESPECT OF FRUIT STALL/KAYAMKULAM.

EXT.R1(E)- TRUE COPY OF LETTER NO.IRCTC/ER/TENDER/MINOR UNITS/06 DATED 15-12-2006 OF REGIONAL MANAGER, IRCTC TO 3RD RESPONDENT IN RESPECT OF FRUIT & JUICE STALL.

EXT.R1(F)- TRUE COPY OF LETTER NO.IRCTC/ER/TENDER/MINOR UNITS/06 DATED 15-12-2006 OF REGIONAL MANAGER, IRCTC TO 3RD RESPONDENT IN RESPECT OF CATERING & BAKERY STALL.

EXT.R1(G)- TRUE COPY OF RECEIPT NO.1914 DATED 9-1-2007 OF IRCTC TO 3RD RESPONDENT.

EXT.R1(H)- TRUE COPY OF RECEIPT NO.1915 DATED 9-1-2007 OF IRCTC TO 3RD RESPONDENT.

EXT.R1(I)- TRUE COPY OF LETTER NO.IRCTC/ERM TENDER/06 DATED 30-8-2006 OF REGIONAL MANAGER, IRCTC.

EXT.R1(J)- TRUE COPY OF RELEVANT PORTION OF DETAILS OF STALL INCLUDING THE 4 STALLS AT KAYAMKULAM.

Thottathil B. Radhakrishnan, J.

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W.P.(C)No.854 of 2007

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Dated this the 13th day of February, 2007.

JUDGMENT

Petitioner was the licensee of certain refreshment outlets in Platform No.1 of Kayamkulam Railway Station. He had been carrying on such activity for a good number of years. Respondents 1 and 2 issued Ext.P9 notice inviting tender for catering units in different railway stations identified as `A' class and `B' class. Certain eligibility criteria were prescribed. It was also stated that the tender forms can be obtained from the zonal office and the regional office of IRCTC Limited.

2. It is alleged in paragraph 6 of the writ petition that there was yet another publication in the Kayamkulam Railway Station wherein among other details, respondents 1 and 2 have shown the

assessed turnover as about Rupeesn 30 lac for vegetarian tea stalls and Rupees 9.5 lac for fruit and auxiliary stalls and that he presumed that the said publication was on the basis of Exts.P7 and P8. But he did not either purchase the tender forms or submit tenders following Ext.P9, though he has produced Ext.P10 tender document to contend relying on the general conditions of licence that, the licence fee is to be calculated at 12%. Relying on that, it is urged on behalf of the petitioner that, assuming that the licence fee is to be calculated at 12%, it would be something like what would be reflected by Exts.P7 and P8 and therefore, the turnover has to be, as pleaded in paragraph 6 of the writ petition. The official respondents 1 and 2 have placed Ext.R1(j) enumerating the categorywise assessment of minimum licence fee etc. in relation to the tender, which reflects at Sl.No.11 thereof that, the catering stall in Platform No.1 in Kayamkulam Railway

Station near the waiting room, of which the petitioner was the then licensee, requires to have a minimum licence fee of Rs.1,72,500/-. This is a material, which obviously would have been available to the petitioner, going by the pleadings of the first respondent that the said document was published in the zonal office and the regional office of the first respondent, in view of the statement in Ext.P9 that tender forms would be available in the zonal office and the regional office.

3. The issue that is projected by the petitioner is that, acting on a publication made locally in the Kayamkulam Railway Station, as pleaded by the petitioner in paragraph 6, the minimum licence fee would have been at the rates reflected by Exts.P7 and P8, which is much above the amount reflected in Ext.R1(j) and it was because of such publication made locally in the

Kayamkulam Railway Station that the petitioner was duped and defrauded to desist from quoting Ext.P9. It is true that respondents 1 and 2 have not specifically denied the averments in paragraph 6 of the writ petition, but, at the same time, it has to be noted that paragraph 6 of the writ petition does not give any details regarding the publication. Even if such details were published and they would have guided the petitioner in the matter, one fails to understand why the petitioner had not submitted tender pursuant to Ext.P9 and then agitate any issue, if at all he had any. That apart, even he had complaint about the rates in Exts.P7 and P8. It is pointed out by the learned counsel for respondents 1 and 2, rightly, that the petitioner himself had challenged Exts.P7 and P8 before this Court and it was on the orders of this Court that the petitioner continued to make payment on the basis of Exts.P7 and P8. He now continues to pay at the same rates.

4. From what is stated above, it can be seen that though the rates at which the petitioner is now paying to respondents 1 and 2 for his occupation and vending activity in the premises is higher than the rate quoted by the third respondent, in whose favour the bid has been confirmed, the petitioner cannot make out a case unless he had participated in the bid. Under such circumstances, this writ petition fails. It is accordingly dismissed.

Thottathil B.Radhakrishnan,
Judge.

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